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BY U.S. CERTIFIED MAIL

November 16, 2017

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Attorney General
U.S. Department of Justice
Citizen Suit Coordinator
Room 2615
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: *Communities for a Better Environment v. Allied Waste Systems, Inc.*,
United States District Court Case No. 3:17-cv-02793-JSC
Consent Decree; 45-day review

Dear Citizen Suit Coordinators,

On November 15, 2017, the parties in the above-captioned case entered into a proposed consent decree setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the Consent Decree and 40 C.F.R. § 135.5, the enclosed consent decree is being submitted to the U.S. Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the consent decree, please feel free to contact me or counsel for Defendant listed below. Thank you for your attention to this matter.

Sincerely,

Douglas J. Chermak
Attorneys for Plaintiff Communities for a Better Environment

cc via First Class Mail: Alexis Strauss, Acting Regional Administrator, EPA Region 9

cc via e-mail: Thomas Bruen, Counsel for Defendant,
tbru@tbsglaw.com

Encl.

Michael R. Lozeau (State Bar No. 142893)
Douglas J. Chermak (State Bar No. 233382)
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Attorneys for Plaintiff
COMMUNITIES FOR A BETTER ENVIRONMENT

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Attorneys for Defendant
ALLIED WASTE SYSTEMS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COMMUNITIES FOR A BETTER
ENVIRONMENT, a non-profit corporation,

Plaintiff,

vs.

ALLIED WASTE SYSTEMS, INC., a
corporation,

Defendant.

Case No. 3:17-cv-02793-JSC

[PROPOSED] CONSENT DECREE

**(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 *et seq.*)**

[PROPOSED] CONSENT DECREE

Case No. 3:17-cv-02793-JSC

1 Shana Lazerow (State Bar No. 195491)
2 COMMUNITIES FOR A BETTER ENVIRONMENT
3 120 Broadway, Suite 2
4 Richmond, CA 94804
5 Tel: (510) 302-0430 x 18
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7 E-mail: slazerow@cbeal.org
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1 and best conventional pollutant control technology ("BCT") to prevent or reduce pollutants; 3)
2 implement BAT and BCT through the development and application of Best Management
3 Practices ("BMPs"), which must be included and updated in the SWPPP; and 4) when necessary,
4 implement additional BMPs to prevent or reduce any pollutants that are causing or contributing
5 to any exceedance of water quality standards:

6 **WHEREAS**, on March 8, 2017, CBE served Allied Waste, the Administrator of the
7 United States Environmental Protection Agency ("EPA"), the Executive Director of the State
8 Water Resources Control Board ("State Board"), the Executive Officer of the San Francisco Bay
9 Regional Water Quality Control Board ("Regional Board"), the U.S. Attorney General, and the
10 Regional Administrator of the EPA (Region 9) with a notice of intent to file suit under Sections
11 505(a)(1) and (f) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A) ("60-Day Notice letter"),
12 alleging violations of the Act and the Permit at the Facility;

13 **WHEREAS**, on May 15, 2017, CBE filed a complaint against Allied Waste in the United
14 States District Court, Northern District Court of California, entitled *Communities for a Better*
15 *Environment v. Allied Waste Systems, Inc.* (Case No. 3:17-cv-02793-JSC); alleging violations of
16 Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and violations of the Permit at the
17 Facility ("Complaint") based on the 60-Day Notice letter;

18 **WHEREAS**, CBE contends in its 60-Day Notice letter and Complaint that, among other
19 things, Allied Waste has repeatedly discharged polluted storm water in violation of the Permit
20 and the Clean Water Act;

21 **WHEREAS**, Allied Waste denies all allegations set forth in the 60-Day Notice letter and
22 Complaint relating to the Facility;

23 **WHEREAS**, the Settling Parties, through their authorized representatives and without
24 either adjudication of CBE's claims or any admission by Allied Waste of any alleged violation or
25 other wrongdoing, believe it is in their mutual interest and choose to resolve in full CBE's
26 allegations in the 60-Day Notice letter and Complaint through settlement and avoid the cost and
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1 uncertainties of further litigation;

2 **WHEREAS**, all actions taken by Defendant pursuant to this Consent Decree shall be
3 made in compliance with all applicable federal and state laws and local rules and regulations;

4 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
5 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

6 1. The Court has jurisdiction over the subject matter of this action pursuant to
7 Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);

8 2. Venue is appropriate in the Northern District of California pursuant to Section
9 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facility at which the
10 alleged violations took place is located within this District;

11 3. The Complaint states claims upon which relief may be granted pursuant to
12 Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

13 4. Plaintiff has standing to bring this action;

14 5. The Court shall retain jurisdiction over this matter for purposes of enforcing the
15 terms of this Consent Decree for the life of the Consent Decree, or as long thereafter as is
16 necessary for the Court to resolve any motion to enforce this Consent Decree.

17 **I. OBJECTIVES**

18 6. It is the express purpose of the Settling Parties entering into this Consent
19 Decree to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, and
20 to resolve those issues alleged by CBE in its Complaint. In light of these objectives and as set
21 forth fully below, Defendant agrees to comply with the provisions of this Consent Decree and to
22 comply with the requirements of the Permit and all applicable provisions of the Clean Water Act
23 at the Facility.

24 **II. COMMITMENTS OF ALLIED WASTE**

25 7. In order to reduce or prevent pollutants associated with industrial activity from
26 discharging via storm water to the waters of the United States, Allied Waste shall implement
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1 appropriate structural and non-structural BMPs, as required by the Permit, as described more
2 fully below.

3 8. **Maintenance of Implemented Storm Water Controls.** Allied Waste agrees that
4 the Facility shall maintain in good working order all storm water collection and management
5 systems currently installed or to be installed pursuant to this Consent Decree, including but not
6 limited to, existing housekeeping measures.

7 9. **Structural Improvements to Storm Water Management Measures at the**
8 **Facility.** By October 15, 2017, unless otherwise indicated, Allied Waste shall implement the
9 following structural improvements to storm water management at the Facility, as indicated on the
10 map attached hereto as Exhibit A:

11 a. To filters storm water prior to discharge, Allied Waste shall replace or
12 install drop inlet filters (120z geotextile filters or equivalent) in the drop inlets at the Facility.

13 b. Allied Waste shall install a triangular silt dike or Filtrexx Sox at the west
14 edge of the green waste tipping area before the eastern tunnel strip drain during rain events that
15 generate runoff (shown on site).

16 c. Allied Waste shall install a ten foot wide strip of 3" diameter rock between
17 the Bin Storage Area and access road at the Facility.

18 d. Allied Waste shall install fiber rolls where storm water discharges from
19 the processing area.

20 e. Within fourteen (14) days of each of the above improvements, Allied
21 Waste shall e-mail CBE digital photographs confirming said improvements.

22 10. **Improvements to Housekeeping Measures at the Facility.** By October 1, 2017,
23 Allied Waste shall sweep twice per week as well as in anticipation of any predicted rain events.

24 11. **Employee Training.** Within sixty (60) days of the Effective Date,
25 Defendant shall conduct employee training for employees/workers who have
26 responsibility for the implementation of any portion of the SWPPP, including the
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1 Monitoring and Reporting Program, or compliance with other terms of the Permit or
2 Consent Decree, to reflect the new measures that are contained in this Consent Decree.

3 12. **Notice of Termination of Coverage Under the Permit.** Defendant shall seek
4 termination of coverage under the Permit on the basis that storm water associated with industrial
5 activity does not discharge to waters of the United States. The following process and
6 requirements shall apply to the development, implementation, and request for approval of an
7 NOT:

8 a. In July 2017, Allied Waste submitted to the Bay Area Water Quality
9 Control Board a Notice of Non-Applicability ("NONA") and Technical Report for concurrence
10 that it complied with the requirements set forth in Section XX.C of the Permit. Allied Waste has
11 provided a copy of its NONA and Technical Report to CBE.

12 b. Within fifteen (15) days of approval of the NONA by the Bay Area
13 Regional Water Quality Control Board, Allied Waste shall file a Notice of Termination ("NOT")
14 and pursue termination of coverage and authorization to discharge pollutants under the Permit.
15 Allied Waste shall provide a copy of its NOT submittal to CBE within ten (10) day of submittal.
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17 c. Within thirty (30) days of concurrence on the NONA Technical Study by
18 the Bay Area Regional Water Quality Control Board, Allied Waste will start construction of the
19 storm water retention improvements, but not before April 1, 2018. The construction is estimated
20 to take approximately 4 months to complete.

21 13. **Sampling and Monitoring.** Unless and until Defendant's NOT is approved,
22 Defendant shall continue to sample and monitor all storm water and non-storm water discharges
23 from the Facility to waters of the United States as required by the Permit.

24 a. Defendant shall analyze all storm water samples collected at the Facility
25 for the following parameters: Total Suspended Solids, pH, Oil & Grease, Iron, Aluminum,
26 Chemical Oxygen Demand, Recoverable Zinc, Lead, and Chemical Oxygen Demand.

27 b. Defendant shall use a state certified laboratory to conduct all analysis
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1 pursuant to this Consent Decree. Defendant shall select analytical test methods from the list
2 provided in Table 2 of the Permit.

3 14. **Amendment of SWPPP.** Within thirty (30) days of the Effective Date, Allied
4 Waste shall amend the Facility's SWPPP to incorporate all changes, improvements, and best
5 management practices set forth in or resulting from this Consent Decree. Allied Waste shall
6 ensure that all maps, tables, and text comply with the requirements of the Permit.

7 Allied Waste shall revise the SWPPP to describe all structural and non-structural BMPs,
8 details of the measures to be installed, and discuss why such BMPs should be effective in
9 addressing the pollutant sources at the Facility. A copy of the amended SWPPP shall be
10 provided to CBE within ten (10) business days of completion.

11 15. **Reports.** During the term of this Consent Decree, Allied Waste shall provide
12 CBE with a copy of all documents submitted to the Regional Board or the State Board
13 concerning the Facility's storm water discharges, including but not limited to all documents and
14 reports submitted to the Regional Board and/or State Board as required by the Permit. Such
15 documents and reports shall be mailed to CBE contemporaneously with submission to such
16 agency. Alternatively, to the extent that Allied Waste submits such documents to the Regional
17 Board or State Board via SMARTS, Allied Waste may satisfy this requirement by providing
18 notice to CBE via e-mail that said results have been uploaded to SMARTS within seven (7) days
19 of uploading said documents.

20 16. **Annual Site Inspection.** Up to three CBE representatives or consultants
21 (including an attorney), may conduct one inspection ("Site Inspection") at the Facility during the
22 term of this Consent Decree is in effect. The Site Inspection shall occur during normal business
23 hours and CBE shall provide Defendant with as much notice as possible, but at least twenty-four
24 (24) hours notice prior to a Site Inspection during wet weather, and seventy-two (72) hours
25 notice prior to a Site Inspection during dry weather. Notice will be provided by telephone and
26 electronic mail. During the Site Inspection, Defendant shall allow CBE and/or its representatives
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1 access to the Facility's SWPPP, storm water monitoring records, and non-privileged reports and
2 data related to storm water monitoring at the Facility. During the Wet Weather inspection,
3 Plaintiff may request that Defendant collect a sample of storm water discharge from the
4 Facility's designated discharge point referenced in its SWPPP, to the extent that such discharges
5 are occurring. Defendant shall collect the sample and provide a split sample to CBE. CBE's
6 representative(s) may observe the split sample(s) being collected by Defendant's representative.
7 CBE shall be permitted to take photographs or video recording during any Site Inspection
8 pursuant to this paragraph. If CBE takes photographs and/or video recording, CBE shall provide
9 Defendant with the photographs and/or video within fourteen (14) calendar days after the Site
10 Inspection. CBE agrees that all individuals who will participate in a Site Inspection will execute
11 a waiver and release prior to the Site Inspection.

12
13 **III. MITIGATION PAYMENT, REIMBURSEMENT OF LITIGATION FEES**
AND COSTS, OVERSIGHT, AND STIPULATED PAYMENTS

14 17. **Mitigation Payment.** In recognition of the good faith efforts by Allied Waste to
15 comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment
16 by Allied Waste of any penalties, which have been disputed but may have been assessed in this
17 action if it had been adjudicated adverse to Allied Waste, the SETTLING PARTIES agree that
18 Allied Waste will pay the sum of thirty thousand dollars (\$30,000) to the Rose Foundation for
19 Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants
20 to environmentally beneficial projects relating to water quality improvements in the San
21 Francisco Bay watershed. Payment shall be provided to the Rose Foundation as follows: Rose
22 Foundation, 1970 Broadway, Suite 600, Oakland, CA 94607, Attn: Tim Little. Payment shall be
23 made by Allied Waste to the Rose Foundation within thirty (30) calendar days of the Effective
24 Date. Allied Waste shall copy CSPA with any correspondence and a copy of the check sent to
25 the Rose Foundation. The Rose Foundation shall provide notice to the Settling Parties within
26 thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the
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1 recipient and purpose of the funds.

2 18. **Reimbursement of Fees and Costs.** Allied Waste shall reimburse CBE in the
3 amount of twenty seven thousand dollars (\$27,000) to help defray CBE's reasonable
4 investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a
5 result of investigating the activities at the Facility related to this Consent Decree, bringing these
6 matters to Allied Waste's attention, and negotiating a resolution of this action in the public
7 interest. The payment shall be made within thirty (30) days of the Effective Date. The payment
8 shall be made via wire transfer or check, made payable to: "Lozeau Drury LLP" and delivered by
9 overnight delivery, unless payment via wire transfer, to: Lozeau Drury LLP, c/o Douglas
10 Chermak, 410 12th Street, Suite 250, Oakland, CA 94607.

11 19. **Compliance Monitoring Funds.** As reimbursement for CBE's future fees and
12 costs that will be incurred in order for CBE to monitor Allied Waste's compliance with this
13 Consent Decree and to effectively meet and confer and evaluate storm water monitoring results
14 for the Facility, Allied Waste agrees to reimburse CBE for its reasonable fees and costs incurred
15 in overseeing the implementation of this Consent Decree up to but not exceeding three thousand
16 (\$3,000). Fees and costs reimbursable pursuant to this paragraph may include, but are not
17 limited to, those incurred by CBE or its counsel to conduct site inspections, review water quality
18 sampling reports, review annual reports, discussion with representatives of Allied Waste
19 concerning potential changes to compliance requirements, preparation and participation in meet
20 and confer sessions and mediation, and water quality sampling. No later than ten (10) calendar
21 before the termination of this Consent Decree, CBE shall provide an invoice containing an
22 itemized description for any fees and costs incurred in overseeing the implementation of this
23 Consent Decree. Allied Waste shall make a payment made payable to "Lozeau Drury LLP"
24 within thirty (30) days of receipt of an invoice from CBE that contains an itemized description of
25 fees and costs incurred by CBE.
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27 **IV. COMMITMENT OF COMMUNITIES FOR A BETTER ENVIRONMENT**
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1 20. **Submission of Consent Decree to DOJ.** Within three (3) business days of
2 receiving all of the Settling Parties' signatures to this Consent Decree, CBE shall submit this
3 Consent Decree to the U.S. Department of Justice ("DOJ") and EPA for agency review
4 consistent with 40 C.F.R. §135.5. The agency review period expires forty-five (45) calendar
5 days after receipt by the DOJ, evidenced by correspondence from DOJ establishing the review
6 period. In the event DOJ comments negatively on the provisions of this Consent Decree, the
7 Settling Parties agree to meet and confer to attempt to resolve the issues raised by DOJ.

8 **VI. WAIVER, RELEASES AND COVENANTS NOT TO SUE**

9 21. In consideration of the above, and except as otherwise provided by this Consent
10 Decree, the Parties hereby forever and fully release each other and their respective parents,
11 affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former
12 employees, attorneys, officers, directors and agents from any and all claims and demands of any
13 kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries,
14 actions or causes of action, either at law or inequity, which the Parties have against each other
15 arising from CBE's allegations and claims set forth in the 60-Day Notice Letter and
16 Complaint for storm water pollution discharges at the Facility up to and including the
17 Termination Date of this Consent Decree.

18 22. The Settling Parties acknowledge that they are familiar with section 1542 of the
19 California Civil Code, which provides:

20 A general release does not extend to claims which the creditor does not know or
21 suspect to exist in his or her favor at the time of executing the release, which if
22 known by him or her must have materially affected his or her settlement with the
23 debtor.

24 The Settling Parties hereby waive and relinquish any rights or benefits they may have under
25 California Civil Code section 1542 with respect to any other claims against each other arising
26 from, or related to, the allegations and claims set forth in the 60-Day Notice Letter and
27 Complaint for storm water pollution discharges at the Facility up to and including the
28 Termination Date of this Consent Decree.

1 23. **No Admission.** The Parties enter into this Consent Decree for the purpose of
2 avoiding prolonged and costly litigation. Nothing in this Consent Decree shall be construed as,
3 and Allied Waste expressly does not intend to imply, any admission as to any fact, finding, issue
4 of law, or violation of law, nor shall compliance with this Consent Decree constitute or be
5 construed as an admission by Allied Waste of any fact, finding, conclusion, issue of law, or
6 violation of law. However, this Paragraph shall not diminish or otherwise affect the obligation,
7 responsibilities, and duties of the Parties under this Consent Decree.

8 **VII. BREACH OF CONSENT DECREE AND DISPUTE RESOLUTION**
9 **PROCEDURES**

10 24. **Informal Dispute Resolution.** The Settling Parties will engage in "Informal
11 Dispute Resolution" pursuant to the terms of this paragraph:

12 a. If a dispute under this Agreement arises, including whether any Settling
13 Party believes that a violation of the Agreement and the Court's dismissal order has occurred, the
14 Settling Parties will meet and confer (telephonically or in-person) within twenty-one (21) days of
15 receiving written notification of a request for such meeting. During the meet and confer
16 proceeding, the Settling Parties will discuss the dispute and make reasonable efforts to devise a
17 mutually acceptable plan, including implementation dates, to resolve the dispute. The Settling
18 Parties may, upon mutual written agreement, extend the time to conduct the meet and confer
19 discussions beyond twenty-one (21) days.

20 b. If any Settling Party fails to meet and confer within the timeframes set
21 forth in paragraph (a) directly above, or the meet and confer does not resolve the dispute, after at
22 least twenty-one (21) days have passed after the meet and confer occurred or should have
23 occurred, either Settling Party may initiate the "Formal Dispute Resolution" procedures outlined
24 directly below.

25 25. **Formal Dispute Resolution.** In any action or proceeding which is brought by
26 any Settling Party against any other Settling Party pertaining to, arising out of, or related to the
27 requirements of the Court's dismissal order and this Agreement, the Settling Parties will first
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1 utilize the "Informal Dispute Resolution" meet and confer proceedings set forth in the preceding
2 paragraph and, if not successful, the Settling Parties will utilize the "Formal Dispute Resolution"
3 procedures in this paragraph. "Formal Dispute Resolution" will be initiated by filing a Motion to
4 Show Cause or other appropriately titled motion ("Motion") in the United States District Court,
5 Northern District of California, to determine whether either party is in violation of the
6 Agreement and the Court's dismissal order and, if so, to require the violating party to remedy
7 any violation identified by the District Court within a reasonable time frame. Litigation costs
8 and fees incurred in the Formal Dispute Resolution process will be awarded in accord with the
9 standard established by Section 505 of the Clean Water Act, 33 U.S.C. § 1365

10 26. **Force Majeure.** Allied Waste will notify CBE if timely implementation of
11 Allied Waste's respective duties under this Consent Decree becomes impossible due to
12 circumstances beyond the control of Allied Waste or its agents, and which could not have been
13 reasonably foreseen and prevented by the respective Allied Waste's exercise of due diligence.
14 Any delays due to the Allied Waste's respective failure to make timely and bona fide
15 applications and to exercise diligent efforts to comply with the terms in this Consent Decree will
16 not, in any event, be considered to be circumstances beyond Allied Waste's control. Financial
17 inability will not, in any event, be considered to be circumstances beyond the Allied Waste's
18 control.

19 a. If Allied Waste claims impossibility, it will notify CBE in writing within
20 twenty (20) days of the date that Allied Waste discovers the event or circumstance that caused or
21 would cause non-performance with the terms of this Consent Decree, or the date Allied Waste
22 should have known of the event or circumstance by the exercise of due diligence. The notice
23 must describe the reason for the non-performance and specifically refer to this section of this
24 Consent Decree. The notice must describe the anticipated length of time the non-performance
25 may persist, the cause or causes of the non-performance, the measures taken or to be taken by
26 Allied Waste to prevent or minimize the non-performance, the schedule by which the measures
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1 will be implemented, and the anticipated date of compliance. Allied Waste will adopt all
2 reasonable measures to avoid and minimize such non-performance.

3 b. The Settling Parties will meet and confer in good faith concerning the non-
4 performance and, if the Settling Parties concur that performance was or is impossible, despite the
5 timely good faith efforts of Allied Waste, due to circumstances beyond the control of Allied
6 Waste that could not have been reasonably foreseen and prevented by the exercise of due
7 diligence by Allied Waste, new performance deadlines will be established.

8 c. If CBE disagrees with Allied Waste's notice, or in the event that the
9 Settling Parties cannot timely agree on the terms of new performance deadlines or requirements,
10 either Settling Party may invoke the dispute resolution process described in Paragraph 27 of this
11 Consent Decree. In such proceeding, Allied Waste will bear the burden of proving that any
12 delay in performance of any requirement of this Consent Decree was caused or will be caused by
13 force majeure and the extent of any delay attributable to such circumstances.

14 **VIII. MISCELLANEOUS PROVISIONS**

15 27. **Effective Date.** The Effective Date of this Consent Decree shall be upon the
16 subsequent entry of the Consent Decree by the Court.

17 28. **Term of Consent Decree.** This Consent Decree shall terminate on December
18 21, 2018, or through the conclusion of any proceeding to enforce this Consent Decree initiated
19 prior to December 21, 2018, or until the completion of any payment or affirmative duty required
20 by this Consent Decree, whichever is the later occurrence.

21 29. **Execution in Counterparts.** The Consent Decree may be executed in one or
22 more counterparts which, taken together, shall be deemed to constitute one and the same
23 document.

24 30. **Facsimile Signatures.** The Parties' signatures to this Consent Decree transmitted
25 by facsimile or electronic mail transmission shall be deemed binding.

26 31. **Construction.** The language in all parts of this Consent Decree, unless otherwise
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1 stated, shall be construed according to its plain and ordinary meaning. The captions and
2 paragraph headings used in this Consent Decree are for reference only and shall not affect the
3 construction of this Consent Decree.

4 32. **Authority to Sign.** The undersigned are authorized to execute this Consent
5 Decree on behalf of their respective parties and have read, understood and agreed to all of the
6 terms and conditions of this Consent Decree.

7 33. **Integrated Consent Decree.** All Consent Decrees, covenants, representations
8 and warranties, express or implied, oral or written, of the Parties concerning the subject matter
9 of this Consent Decree are contained herein.

10 34. **Severability.** In the event that any of the provisions of this Consent Decree are
11 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
12 adversely affected.

13 35. **Choice of Law.** This Consent Decree shall be governed by the laws of the United
14 States, and where applicable, the laws of the State of California.

15 36. **Full Settlement.** This Consent Decree constitutes a full and final settlement of
16 this matter. It is expressly understood and agreed that the Consent Decree has been freely and
17 voluntarily entered into by the Parties with and upon advice of counsel.

18 37. **Negotiated Consent Decree.** The Parties have negotiated this Consent Decree,
19 and agree that it shall not be construed against the party preparing it, but shall be construed as if
20 the Parties jointly prepared this Consent Decree, and any uncertainty and ambiguity shall not be
21 interpreted against any one party.

22 38. **Modification of the Consent Decree.** This Consent Decree, and any provisions
23 herein, may not be changed, waived, or discharged unless by a written instrument signed by the
24 Parties.

25 39. **Assignment.** Subject only to the express restrictions contained in this Consent
26 Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to
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1 the benefit of and be binding upon the Parties, and their successors and assigns.

2 40. **Mailing of Documents to CBE/Notices/Correspondence.** Any notices or
3 documents required or provided for by this Consent Decree or related thereto that are to be
4 provided to CBE pursuant to this Consent Decree shall be, to the extent feasible, sent via
5 electronic mail transmission to the e-mail addresses listed below or, if electronic mail
6 transmission is not feasible, via certified U.S. Mail with return receipt, or by hand delivery to
7 the following address:

8 Communities for a Better Environment
9 Attention: Shana Lazerow
10 120 Broadway, Suite 2
11 Richmond, CA 94804
E-mail: slazerow@coastkeeper.org

12 With copies sent to:

13 Douglas Chermak
14 Lozeau Drury LLP
15 410 12th Street, Suite 250
16 Oakland, CA 94607
E-mail: doug@lozeaudrury.com

17 Unless requested otherwise by Allied Waste, any notices or documents required or
18 provided for by this Consent Decree or related thereto that are to be provided to Allied Waste
19 pursuant to this Consent Decree shall, to the extent feasible, be provided by electronic mail
20 transmission to the e-mail addresses listed below, or, if electronic mail transmission is not
21 feasible, by certified U.S. Mail with return receipt, or by hand delivery to the addresses below:

22 Allied Waste:

23
24 Allied Waste Systems, Inc.
25 Attention: Michael Caprio
26 3260 Blume Drive, Suite 200
27 Richmond, California 94806
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1 With copies sent to:

2 Thomas M. Bruen
3 Law Offices of Thomas M. Bruen
4 1990 North California Blvd., Suite 620
5 Walnut Creek, CA 94956
6 E-mail: tbruen@tbsglaw.com


7 Notifications of communications shall be deemed submitted on the date that they are
8 emailed, or postmarked and sent by first-class mail or deposited with an overnight mail/delivery
9 service. Any changes of address or addressees shall be communicated in the manner described
10 above for giving notices.

11 41. If for any reason the DOJ or the District Court should decline to approve this
12 Consent Decree in the form presented, the Parties shall use their best efforts to work together to
13 modify the Consent Decree within thirty (30) days so that it is acceptable to the DOJ or the
14 District Court. If the Parties are unable to modify this Consent Decree in a mutually acceptable
15 manner that is also acceptable to the District Court, this Consent Decree shall immediately be
16 null and void as well as inadmissible as a settlement communication under Federal Rule of
17 Evidence 408 and California Evidence Code section 1152.

18 42. The settling Parties hereto enter into this Consent Decree, Order and Final
19 Judgment and submit it to the Court for its approval and entry as a final judgment.

20 COMMUNITIES FOR A BETTER ENVIRONMENT

21 Date: November 15th, 2017

22 
23 Ernesto Arevalo
24 Northern California Program Director
25 Communities for a Better Environment
26
27
28

1 ALLIED WASTE SYSTEMS, INC.

2 Date: 11/14, 2017

3 [Signature]
4 Andrew J. Sweet
5 Vice President

6
7 Approved as to form:

8 LOZEAU DRURY LLP

9 Date: _____, 2017

10
11 Douglas Chermak
12 Attorneys for Communities for a Better Environment

13 LAW OFFICES OF THOMAS M. BRUEN

14 Date: Nov. 14, 2017

15 [Signature]
16 Thomas Bruen
17 Attorney for Allied Waste Systems, Inc.

18
19 IT IS SO ORDERED.

20
21 Date: _____

22 Honorable Jacqueline Scott Corley
23 United States Magistrate Judge
24 Northern District of California

EXHIBIT A

